

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

AT CHARLESTON

IN RE: ETHICON, INC. PELVIC REPAIR SYSTEM
PRODUCTS LIABILITY LITIGATION

MDL No.
2:12-MD-2327

Huntington, West Virginia
September 6, 2013

TRANSCRIPT OF TELEPHONIC STATUS CONFERENCE
BEFORE THE HONORABLE CHERYL A. EIFERT
UNITED STATES MAGISTRATE JUDGE

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1 Friday, September 6, 2013, at 2:00 p.m. in conference room

2 THE COURT: Well, we are lucky to have Terry Ruffner
3 here again with us today to act as our court reporter, so I'm
4 going to remind you to identify yourself before you speak so
5 that she can get the transcript correct in that manner, all
6 right?

7 MR. AYLSTOCK: Yes, Your Honor. This is Bryan
8 Aylstock.

9 THE COURT: All right. Thank you, Bryan. Who would
10 like to go first?

11 MR. AYLSTOCK: Your Honor, this is Bryan Aylstock.
12 I just wanted to update the Court and clarify something about
13 an issue for last week, and that is the deposition of James
14 Mittenthal, who was the 30(b)(6) designee on document
15 retention issues. And as the Court is aware and Mr. Gage
16 pointed out, it was a brand new issue. It wasn't on the
17 agenda. And, frankly, I was blindsided by the -- what
18 happened to that. And there was a representation made that
19 there were ten new witnesses that were identified in some
20 letter that I hadn't seen.

21 And I did go back to investigate that and just want the
22 Court to know that nine of those ten were identified at the
23 deposition, at the end of the deposition of Mittenthal. There
24 was one additional witness, Allison London Brown. Of course,
25 the deposition, we understand the Court's ruling and are not

1 intending to re-argue that, but the New Jersey counsel
2 couldn't be available on the 17th, so now it's been
3 rescheduled for the -- I believe the following week, so that
4 we can coordinate with New Jersey and hopefully knock it out
5 once and for all. But I just wanted the Court to be aware of
6 those facts.

7 THE COURT: Well, I appreciate that. So you do have
8 it scheduled for the 17th; is that correct?

9 MR. AYLSTOCK: Well, we had it for -- well, it works
10 for us, Judge, but New Jersey counsel is not available on that
11 date. So to try to continue efforts at coordination and
12 let's -- I mean we're prepared to go forward on the 17th.
13 Their preference, of course, at Ethicon is let's do it once,
14 and, you know, that would be our preference too if we could
15 make it happen.

16 There is a date the following week that is available for
17 both the MDL and New Jersey counsel, and I believe we've
18 settled on that date. Obviously we want it to be done as soon
19 as humanly possible because it's an important issue for us.

20 THE COURT: Mr. Gage, does it -- does that agree
21 with your understanding, that there's perhaps a date after --
22 a date after September 17th when this witness can be
23 available and both New Jersey counsel and MDL counsel can be
24 available?

25 MR. GAGE: This is William Gage. Yes, Your Honor.

1 I saw some e-mail tracks this morning that indicated the
2 parties, including both MDL and New Jersey and Ethicon, had
3 agreed to. I think it's September 24.

4 THE COURT: Very good. What other issues can we
5 discuss today?

6 MR. AYLSTOCK: Your Honor, again, this is Bryan
7 Aylstock. There's an issue regarding some production, and I
8 think Mr. Cartmell can speak to the specifics about it because
9 it relates to some 30(b)(6) testimony that was provided and
10 then kind of dovetails into our requests for production
11 schedule or at least a sharing of the information, and we did
12 receive an e-mail from Mr. Gage with a chart of at least some
13 information about where the production is, but I think Tom can
14 get into the specifics of the documents related to this
15 MedScand that were just recently produced.

16 THE COURT: Mr. Cartmell?

17 MR. CARTMELL: Hi, Your Honor. This is Tom
18 Cartmell. I wanted to give you sort of an update about the
19 depositions and then tell you about the information we got
20 related to the custodial files.

21 We have been able to schedule, you know, depositions. We
22 have the September 23rd expert cut-off. And because of
23 timing, we've had to push some of those beyond the cut-off,
24 and I'm not -- we're not asking for, you know, a change in the
25 deadline, but it does turn out that some of the depositions

1 that we were hoping to originally take before then are going
2 to be scheduled in October, and we've been working
3 cooperatively to, I think, schedule those. And I think all
4 but maybe the continuation of Mr. Smith's deposition has been
5 scheduled.

6 We did receive this week a chart from Mr. Gage related to
7 the custodial files. You may recall that last week we talked
8 about, you know, providing us some idea of when the custodial
9 file productions would be complete, because we were having
10 difficulty with getting large volumes of documents after the
11 depositions. And so Mr. Gage did send over a schedule related
12 to the depositions in September, and it does add to our
13 concern, honestly, because what we received was a chart that
14 has some information related to that. I believe there's ten
15 or -- there's eleven depositions on here scheduled in
16 September, the first one being, I believe, the 11th, either
17 the 10th or the 11th.

18 At any rate, what we found was, for example, with two of
19 the custodians, the witnesses, Laura Angelini, who you may
20 recall is the one that has been called the godmother of the
21 actual TTV product, she is called -- described as
22 substantially complete, although there's a footnote that says
23 that they have found another hard drive for her recently. The
24 hard drive will not be produced until mid October. Well, her
25 deposition is September 16th and 17th, and we're looking for

1 another date.

2 The same is true with the Chief Medical Officer who is
3 being produced, I believe, on the 16th and 17th as well.
4 These are both depositions that we've asked for and they've
5 known about for, I think, greater than five months. And
6 Angelini was actually scheduled once before in March. We
7 asked for it in March. It was scheduled in July.

8 So the same thing with James Hart. He's substantially
9 complete, although he -- there's a hard drive that's been
10 located, I guess, and that won't be produced till mid October.
11 With several others, the former employees are listed as
12 complete. And three of the four or five, we've -- the
13 footnotes indicate that they have completed documents for
14 those.

15 But for a few other custodians, witnesses, Axel Arnaud,
16 who's a medical director who we deposed in July, he is listed
17 as complete, but they -- he's a current employee, and it's
18 listed as the last time there was an update done on a
19 supplement to look at whether or not there's supplemental
20 documents is in November of 2012. So we deposed him in July,
21 but they haven't looked and supplemented his ongoing custodial
22 file since November of last year.

23 We have another day of his deposition coming up this
24 month, and it doesn't look like they're intending to do any
25 supplementation to his; and obviously it's within a week, I

1 think, now of his deposition.

2 The same is true with Dan Lamont. He's a current
3 employee. They list him as complete, but they have not
4 supplemented his file, being a current employee, since
5 November of 2012, and we have done his 30(b)(6) months ago,
6 and there's a continuation of that this month as well.

7 So there's just some concerns here, you know. We
8 continue to get documents, large volumes, after the fact that
9 sort of dovetails into what Bryan was saying about the
10 MedScand documents. We had a dump of MedScand documents I
11 believe this last Saturday.

12 Many of the documents we got Saturday are MedScand
13 documents that were related to topics in our 30(b)(6) Dan
14 Smith done months ago. There are audits and there is a due
15 diligence file that's extensive. And those were, you know,
16 topics that routinely during the depositions, Dan Smith, who,
17 of course, is not at the company at this time, was saying,
18 "Yes, the documents reflect they exist, but I don't know;
19 you'd have to ask somebody else because I haven't seen them."
20 And then it turns out now we have depositions on the Classic
21 case, which is the first filed in this litigation, a 30(b)(6)
22 on the Classic, which is filled with "I don't knows" related
23 to documents that we now have.

24 So, you know, I guess, again, we were hopeful that we
25 could get, you know, a ruling that they would complete these

1 productions of custodians. And we understand with current
2 employees, they're going to have to continue to supplement
3 them, but we'd obviously like them to continue to supplement
4 them behind me so that, you know, especially right before we
5 take depositions, we can get the additional documents.

6 THE COURT: Mr. Gage?

7 MR. GAGE: Your Honor, this is William Gage. Judge,
8 there was a lot said there, and I was trying to take notes,
9 and I think it might be better, rather than me trying to
10 respond to everything, maybe let me respond to a couple of
11 points and then we can discuss it, if Your Honor chooses, in
12 greater detail.

13 Let's take, for example, Judge -- well, to rewind, you'll
14 remember, Judge, we talked last week about the issues with
15 regard to custodial productions. The plaintiffs wanted to
16 ensure that we were doing our best efforts to get those done
17 in advance of all these depositions that are scheduled for
18 September.

19 So what we did was after that call, I asked for, you
20 know, kind of a status report from our documents people and
21 the documents lawyers, all the people that are devoted to
22 gathering, collecting, and organizing all this stuff. And so
23 they put this chart together. And this is -- for example,
24 Judge, the two witnesses that Mr. Cartmell spent a fair amount
25 of time discussing, Laura Angelini and James Hart, the chart

1 indicates for both of these witnesses the same information.
2 It indicates that the status of production is substantially
3 complete; and then there's a footnote, and the footnote
4 indicates that the hard drives were not available for
5 supplemental collection until recently. Responsive documents,
6 if any, from these hard drive supplementations are expected to
7 be produced early to mid October.

8 And I asked the document teams, "Well, what's going on
9 with this? Tell me why is this an issue." And they said when
10 we go in and do a supplemental production for a particular
11 witness, when you do things like you go in and you get their
12 e-mail -- you know, that's the stuff that most people are
13 interested in. When you go in and you get your e-mail, you
14 can apparently grab that information remotely or you can get
15 it from some other place other than physically going to the
16 witness and physically getting that information from the
17 witness. That's how I understand it and how it was explained
18 to me.

19 However, when you're doing a supplemental production,
20 when you want to -- apparently, you know, there are a number
21 of different things that you do, and one of the things on the
22 checklist is to go to the witness and say, "Give me your
23 laptop or your whatever, your hard drive, and let me see if
24 you've dragged anything onto a hard drive that may need to go
25 into the supplemental production."

1 So, Judge, as it was described to me, you know, the vast,
2 vast, vast, vast majority of whatever witnesses typically keep
3 has been included and produced in the supplemental production.

4 What may still be out there are things that the witness
5 may have dragged to a hard drive. And I said, "Well, when can
6 we get that?" And they said, "Well, these witnesses are" -- I
7 think certainly -- I think it was Laura Angelini has either
8 been out of the country on an extended vacation or out of the
9 country for an extended period of time, and they're making
10 arrangements to get her laptop, to get -- and/or her hard
11 drive, to get this data, if there is any, and then include
12 that.

13 And they said once we get it, you know, it goes to the
14 vendor and has to get processed along with all of the other
15 requests that the plaintiffs have made.

16 So as they are telling me, Judge, the belief is that
17 there is a small chance that what has not yet been collected
18 is likely to be anything of significance. It would apparently
19 have to be something that would have been on her hard drive in
20 the last six months or whatever it is; seven, six months.

21 Now, as I understand it, Miss Angelini is being deposed
22 largely about MedScand and/or her involvement with MedScand or
23 her knowledge about it, and she did make, I think, the
24 30(b)(6) on MedScand. I'm not sure. But as I understand it,
25 most of those transactions and activities occurred in 1999,

1 2000, 2001, around that time frame.

2 So, Judge, that's kind of how it's all shaking out. I'm
3 not -- I mean I think -- I think we are doing what we should
4 be doing, and that is going to the nth degree to get all this
5 stuff, but it appears to me -- obviously, I can't make a
6 representation until we know what's on the hard drive, but it
7 appears to me that the chances of there being anything on the
8 hard drive that would be relevant to the subject matter of the
9 depo is pretty slim. And the same would hold true with, I
10 think, James Hart, who falls into the same category as Laura
11 Angelini.

12 So what I wanted to do was to make sure that when we sent
13 the chart, we put the footnotes and we made the caveats so
14 that the plaintiffs would know that we feel like we've done a
15 very robust supplemental production, but there's still a
16 couple of -- you know, there's a closet or two that we hadn't
17 been able to get into and we wanted them to know it.

18 THE COURT: Well, Mr. Cartmell, does that reassure
19 you some?

20 MR. CARTMELL: Your Honor --

21 MR. AYLSTOCK: Judge, this is Bryan Aylstock. Would
22 you mind if I butted in real quick?

23 THE COURT: No.

24 MR. AYLSTOCK: A couple of things. First -- well,
25 the chart that was provided was, I think, ten or eleven names

1 and referred that what we'd produced we've searched 200-and-
2 some custodians and produced documents.

3 Well, you know, I kind of was expecting us to know, well,
4 are the productions complete on those custodians or not. And
5 then secondly, with regard to the completeness, you know, it
6 sounded like, from what Mr. Gage said, is that they kind of do
7 this electronic sweep when they do the custodial hard drive,
8 but they hadn't until recently asked Miss Angelini or Dr.
9 Hart, you know, "Do you have anything else?" And that's when
10 they find these other things.

11 And what we're finding in the productions -- and the
12 Trzewik production is a really good example. As you may
13 recall, Trzewik was the witness over in Germany who we got, I
14 think, 11,000 documents, something like that, you know, very
15 close to the deposition and they needed to push off.

16 Well, what we're seeing in that production as we're going
17 through the documents in preparation for that deposition is
18 multiple, multiple examples of documents from other witnesses,
19 witnesses we've already done, like Dan Smith, like Joerg
20 Holste, that are very important documents that we would have
21 questioned those witnesses about that weren't -- and we've
22 gone back and verified this -- weren't in their custodial
23 files and while these folks are current employees. And so it
24 doesn't make a whole lot of sense what we're seeing, why these
25 documents are being produced, that are clear they're e-mails,

1 you know, to or from or copied to these folks during the
2 litigation hold period that simply are not in their file that
3 we didn't get until after their deposition.

4 So I guess that's a long way of saying no, I'm not -- it
5 doesn't alleviate my concern about it. In fact, in some ways
6 it makes it even more concerning because we continue to get
7 documents after depositions but that, frankly, were relevant
8 and either should have been in the custodial file or clearly
9 relevant to what we -- the subject matter at hand.

10 The MedScand documents were, first of all, I would
11 submit, under a Rule 26 obligation of the civil litigation,
12 but were certainly requested 13, 14 months ago in the requests
13 for production. And we've been on this trail for a very long
14 time and, you know, had months of back and forth about it;
15 And only, you know, I think within the last week do we get
16 certain key documents that we would have used for the
17 30(b)(6).

18 So what we'd like, frankly, Your Honor, is an order that
19 they need to complete their production -- first of all, tell
20 us, not just eleven witnesses, tell us for the custodians,
21 have you actually gone to them and asked them and are they
22 complete at least as of a certain date under your obligations,
23 and order that to be done within a time certain, hopefully
24 soon, and then have the supplementation of an Axel Arnaud,
25 these current employees, that clearly are still working on

1 these products, you know, a more seasonably date-certain
2 supplemental production so that we can know what's there and
3 what's not in advance of their depositions.

4 MR. GAGE: Your Honor, if I could -- this is William
5 Gage -- if I could just briefly respond to that.

6 The reason that -- the first issue I think that Bryan
7 mentioned was the custodians through September, and he pointed
8 out that that only included the people that were scheduled to
9 be deposed in September and didn't include the people that
10 are -- that they've asked us to depose in September -- I mean,
11 I'm sorry -- in October and November and then also people who
12 were deposed previously and that there is no pending depo
13 request.

14 My view and my belief from the call last Friday was that
15 I needed to focus on the most urgent task, which was the
16 people that were set for September. I have asked our document
17 people to prepare a similar chart for the people that are
18 under discussion for deposition in October and then also to
19 prepare a chart for the people who had previously been deposed
20 and are no longer, you know, up for -- or on a depo schedule.

21 So that information is coming. I just needed to focus my
22 people on that which was the hottest. So I'm going to be --
23 we're going to be providing that information.

24 THE COURT: And when will you be --

25 MR. GAGE: Secondly, Judge --

1 THE COURT: When will you be providing that
2 information?

3 MR. GAGE: On the -- for the people on October,
4 easily we can -- we can do that next week. I think I can
5 probably provide it for everybody next week. If I -- if I
6 can't provide it for everybody next week, I will let Bryan
7 know early next week, like Monday, but my belief is that I can
8 definitely do those for the people for October next week and
9 probably for everybody by next week.

10 And, Judge, the reason -- one of the things -- one of the
11 reasons that we actually want to do that is because -- and
12 Bryan can attest to this. He and I have been swapping e-mails
13 the last couple of days. You may remember we talked last week
14 about I had recommended we have a face-to-face meet-and-confer
15 to talk about the priority of the remaining production and the
16 gaps in the remaining production, and Your Honor had suggested
17 that would be a good idea.

18 Well, Bryan and I look like we've settled on what we
19 think is going to be maybe around the last weekend of
20 September. I mean not that we're going to meet on the
21 weekend, but we're going to meet on a day either before or
22 after that weekend. And what we want to do, in addition to
23 these custodial collections, is be able to start working with
24 plaintiffs next week to formulate the agenda for that face-to-
25 face, because I believe that's where we're going to be able to

1 come out of a, you know, a sure-enough all-day face-to-face
2 meeting and we're going to know where the true differences
3 are. But anyway I just wanted to remind you of that.

4 The other point I wanted to mention, Judge, was on this
5 issue of finding documents in custodial files for one witness
6 but not finding them in another, Judge, I will be candid with
7 you. I'm not an e-discovery expert, but I've been around it
8 enough to know that that is apparently a feature that's not
9 uncommon in electronic discovery. I can't give you the full
10 list of reasons why that occurs, but I do know that -- I've
11 seen that occur in other cases and I know that there's been
12 talk about it. Those things do occur.

13 And as Bryan and others on the plaintiffs' side let us
14 know about these anomalies, what I do with those anomalies
15 is I send them back to our document people. I'll forward
16 the e-mails or I'll have a phone call with them and I will
17 say, as we did with, for example, this Trzewik custodial
18 file that there has been concern, I've asked our document
19 people, "Okay. Bryan makes a good point. Why are certain
20 documents in there and why are certain documents
21 missing?"

22 And then they provide -- you know, they're looking into
23 that sort of stuff so that we can get a -- you know, try to
24 get our hands around it to get some understanding of what's
25 happening. So those problems are problematic at times and

1 they are sometimes equally perplexing to us as well, so -- but
2 we're doing the best we can to try to meet those concerns.

3 THE COURT: I think as far --

4 MR. AYLSTOCK: Your Honor --

5 THE COURT: Let me just step in here a second. I
6 think as far as the update or the list of documentation from
7 the custodians, Mr. Gage, I do want you to have the October
8 people prepared by next week. And then on Friday we'll see,
9 if you haven't gotten the November people and the rest of the
10 people updated by then or the list provided to the plaintiffs,
11 we can figure out how much longer it's going to take you to do
12 that. But I do want you to have some information to the
13 plaintiffs as to where you are on the witnesses that are
14 scheduled for deposition in October.

15 The other point I want to raise here is I do understand
16 that for some reason sometimes documents don't appear in
17 custodial files that you would think should be there, but on
18 the flip side of that, if the plaintiffs have taken a witness'
19 deposition and after that deposition significant documents
20 turn up upon which that witness would have been questioned had
21 those documents been available at the deposition, I'm going to
22 be inclined to let the plaintiffs take another deposition of
23 that witness to ask about the newly discovered documents,
24 because I don't think it's fair when they're going in and
25 taking these depositions, they're going in with the belief

1 that they have the most significant and relevant documents and
2 they've had a chance to look through them and they've had an
3 opportunity to base their questioning on those documents, it's
4 not fair for you to come up with documents after the fact and
5 then expect them to be precluded from questioning the witness
6 about those documents.

7 Now, I hate the thought of having third- and fourth-round
8 depositions of these people, but that ultimately may be what
9 happens if this continues. I don't know of any other way to
10 address it.

11 MR. CARTMELL: Your Honor, this is Tom Cartmell. If
12 I can just add one thing. And on that -- on what you just
13 stated, to respond real quickly, we are looking at that
14 currently, for example, with the MedScand documents. I mean
15 we don't want to go back, believe me, and take depositions
16 just because there's extra documents if it's not going to
17 change anything and it's not relevant and all that. But what
18 we've got to look at is, you know, now we've got these videos
19 that are, you know -- because these people aren't going to
20 show up at trial, obviously -- can they be used and is it
21 really relevant information.

22 So we may be making some of those requests to you now.
23 We just -- with all that's going on and the expert report
24 deadline coming up and stuff, we're just not there yet on
25 that, and obviously we've missed the ability to probably do

1 that before the expert deadline, but we did that.

2 The one other thing I wanted to add, though, is one of
3 the things I mentioned was, for example, with Axel Arnaud and
4 Dan Lamont, these are current employees. And when they tell
5 us on this chart that they have not done a new sweep since
6 November of 2012, which, frankly, was several months before
7 their depositions, more than -- I believe more than six months
8 before their depositions, and five months since we requested
9 their depositions, what we would like is for those situations
10 to be updated right away, because what we're finding -- I
11 understand Mr. Gage said, you know, these should all be new
12 documents. But what we're finding in our supplements that are
13 coming in typically after the fact, these are not just new
14 documents. These are old documents. These go way back.
15 These are critical documents.

16 And even the new documents that we get are critical
17 because, for example, we've just recently learned that there
18 was going to be an update to the clinical expert report on the
19 TVT Classic, which is the first trial, and we kept seeing
20 documents saying that. We kept looking for that. And the
21 kind of information from those reports is that they have to,
22 in order to be able to sell those, that product, the Classic,
23 they have to update that report. They have to have all the
24 risk information in there, all the warnings, the literature
25 searches and things like that.

1 And in the Profit litigation, they did that. It wasn't
2 until recently. And there was a whole new set of risk
3 information that showed up. And, if so, we then sent an
4 e-mail and we said, "Hey, we have not seen this clinical
5 expert report that was supposedly updated in April 2012," and
6 just yesterday -- April of what? Oh, I'm sorry. April of
7 2013. And just yesterday, I believe, we got an e-mail saying,
8 "We found it. We'll send it over to you," which obviously
9 that would have been very useful during some of the prior
10 depositions.

11 So we would also like them to do these sweeps, you know,
12 for Axel Arnaud, for Dan Lamont and these people well in
13 advance of the depositions and well in advance of the trial so
14 we have the information. In other words, don't just quit in
15 November of 2012.

16 THE COURT: Does your --

17 MR. GAGE: Your Honor, I think that --

18 THE COURT: Does your ESI protocol say anything
19 about supplementation?

20 MR. GAGE: Judge, that's exactly where I was headed.
21 I don't have a copy of it in front of me. I know that when I
22 was having -- I'm just being very candid with the Court. When
23 I was having discussions with the documents people, it was the
24 belief of at least one or two of them that there was no
25 definitive order or agreement with plaintiffs on the timing of

1 the -- you know, on when supplemental sweeps would be done.

2 I have not confirmed that or refuted it, but I know that
3 that was the belief of several people whose opinions I tend to
4 trust on these matters, and that is exactly one of the issues
5 that we wanted to put on the agenda with the plaintiffs, was
6 to establish a specific protocol and a timing mechanism for
7 how that gets done, because even -- because I mean if this
8 litigation goes on two years, three years, four years, however
9 long it goes on, we have to have a common understanding of how
10 that proceeds in the future, because otherwise we're going to
11 say, "Well, we did a supplemental review six months ago," and
12 Tom will say, "Well, no, you should have done it two months
13 ago or three months ago." And I think we've just got to sit
14 down and, as we did with the hernia stip, work it out and work
15 it out soon.

16 THE COURT: I agree with that.

17 MR. GAGE: Because I don't -- I do not want to do
18 what Your Honor has indicated; and that is, I don't want to
19 have to keep putting people up for depositions. And the best
20 way for my client to prevent that is to get an agreement on
21 this issue.

22 THE COURT: I agree with you. I think you're
23 absolutely right. I don't -- I don't have the protocol in
24 front of me either, and I don't remember if or what it says
25 about supplementation. I mean clearly under the Federal Rules

1 there's a duty to supplement, but this is a little different
2 because you're talking about going back and doing re-checks of
3 people's computers. So it's not your standard
4 supplementation.

5 I do think that's something that you all should talk
6 about and perhaps have your computer people involved so that
7 you know what you're talking about as far as time commitments
8 to get these things done and how you want to prioritize these
9 supplemental sweeps with the current reviews that you're doing
10 of custodial files. You ought to put that on your agenda
11 definitely.

12 MR. GAGE: We will do that.

13 MR. AYLSTOCK: This is Bryan Aylstock. I did -- I
14 was able to pull up the ESI protocol, and I think Mr. Gage is
15 correct; there's nothing stated one way or the other in that.
16 You know, frankly, we understood that we were complying with
17 the Federal Rules and the Federal Rules require reasonable
18 supplementation. And when we have a witness being deposed and
19 they, you know, hadn't been swept for six, eight months, and
20 then another deposition, I expect that the rule of reason to
21 be -- then apply.

22 And, look, I'm happy to meet with William. We get along
23 great, so on and so forth, but the problem is it's two weeks,
24 it's four weeks and then we -- and then we have these
25 depositions come up. So we'd like, at least for those

1 depositions, that the sweeps to be made now, that they be
2 produced immediately.

3 These are -- the sweeps were -- you know, now we're going
4 on a year since the sweep on current employees with very
5 relevant information. So, you know, I just expected the rules
6 to be followed, I guess.

7 THE COURT: Well, I think I've made myself clear on
8 how I feel I would rule if you come back and ask for another
9 deposition on a witness because important documentation has
10 been found after that witness' deposition. I don't think
11 anybody wants to do multiple rounds of depositions on the same
12 person because documents keep getting discovered that probably
13 should have been discovered earlier, but that ultimately will
14 be what happens.

15 So I think, you know, clearly, Mr. Gage, you're going to
16 want to try to do these sweeps and get documents before these
17 depositions reasonably in advance of the depositions.
18 Otherwise, you may find yourself having to put these people up
19 for deposition again.

20 MR. GAGE: You're exactly right, Your Honor, and I
21 can assure you the plaintiffs will join me in saying there's
22 no one on this call who wants to prevent additional
23 depositions more than me.

24 THE COURT: Right.

25 MR. GAGE: I mean that is really my number one

1 desire, is I really want to bring the depositions to a halt as soon
2 as I can just because, you know, it's very difficult for the
3 client and for the lawyers to get it all together. So we have
4 a great incentive to do this, and so -- but I'm going to let
5 our team certainly know of Your Honor's viewpoint on this, and
6 we're going to do the best that we can in the time that
7 remains.

8 THE COURT: All right. I think that's probably all
9 that can be done today on that point. I do think it's in all
10 of your benefit to put this topic on your agenda and come up
11 with some acceptable time frame for doing these sweeps, these
12 supplemental sweeps, so that at least everybody is on the same
13 page, because, you know, obviously Mr. Aylstock is thinking
14 that supplementation is going to be seasonable. Of course, we
15 don't know what that means in the context of ESI or in a case
16 this large, a documentary case, you know, this large. So it
17 seems to me you ought to sit down and talk about what you both
18 think seasonable means.

19 MR. AYLSTOCK: This is Bryan Aylstock, Judge. We'll
20 certainly do that and hopefully be able to work it out and
21 report back to you in next week's call.

22 THE COURT: Great.

23 MR. AYLSTOCK: And then there's one particular
24 time-sensitive issue I just wanted to flag; and that is, the
25 Trzewik and Hellhammer depositions -- they're the ones in

1 Germany -- Trzewik -- and I'm probably butchering his name --
2 this next week, and we had asked for --

3 THE REPORTER: Wait.

4 THE COURT: Mr. Aylstock, can you just slow down a
5 tiny bit?

6 MR. AYLSTOCK: I'm sorry.

7 THE COURT: Yeah. We're having some trouble
8 hearing.

9 MR. AYLSTOCK: And I was talking too fast, as I am
10 wont to do. Mr. Trzewik's deposition is next week, and we had
11 asked for separation agreements and non-disparagement
12 agreements, to the extent they exist, to be produced. And
13 given those two depositions and the length that we are going
14 to travel to them, I'd just like that to be done.

15 And I totally agree, we do not want to go back to Germany
16 or anywhere else and spend any more time away from our
17 families doing depositions that we could have completed
18 earlier. So I just want to point those out.

19 THE COURT: So, Mr. Aylstock, as I understand what
20 you're saying is you've got Mr. Trzewik's deposition scheduled
21 in Germany next week and --

22 MR. AYLSTOCK: Yes, Your Honor.

23 THE COURT: -- you have asked for separation
24 agreements, and what else?

25 MR. AYLSTOCK: Non-disparagement agreements. These

1 are former employees. And we know for some former employees,
2 one of the things that they have to agree is, to get their
3 golden trophy or pension or whatever, is, "I'm not going to
4 say anything bad about the company when I leave."

5 THE COURT: Right.

6 MR. AYLSTOCK: So if those exist -- I don't know
7 whether they do -- we just don't want to go back to Germany
8 again.

9 THE COURT: Mr. Gage, do those --

10 MR. GAGE: Yes.

11 THE COURT: -- exist with Mr. Trzewik?

12 MR. GAGE: Your Honor, this is William Gage. I
13 received -- we received an e-mail on Wednesday, September 4,
14 which was at 7:39 p.m., which would have been two days ago,
15 making the request for these two witnesses, Hellhammer and
16 Trzewik, for their separation agreements and the
17 non-disparagement agreement.

18 So we immediately flipped that to our documents people
19 and asked them to start immediately investigating, because I
20 wanted to be in a position to be able to say before today what
21 the situation is.

22 I received an e-mail 30 -- well, 90 minutes before this
23 conference call -- well, actually I may have gotten it a
24 little bit sooner than that. Sometime this morning I got an
25 e-mail that indicated that our documents-review people had

1 reviewed these files, and we had to have someone who I -- from
2 my understanding of the e-mail, we had to have a native German
3 reviewer look at them. Apparently they must be in the German
4 language. And the information that I was supplied with just
5 before we got on the call was that neither of these files seem
6 to contain a specific agreement entitled Separation Agreement
7 or Non-Disparagement Agreement, but there are employment
8 contracts that contain confidentiality clauses that cover
9 business matters and business secrets learned while employed
10 by the company and then a subsequent contract with a broader
11 clause covering all confidential matters and activities. And
12 that was for Mr. Trzewik.

13 For Mr. Hellhammer, there was one contract that contains
14 a broader confidentiality agreement -- I'm sorry -- her,
15 requiring her to keep secret all confidential matters and
16 activities learned while working for the company unless she's
17 legally required to share them.

18 So, Judge, you know, I got the request Wednesday night.
19 That's the best that I've got as of this time, but obviously,
20 Judge, again, if we have them, it is our intent and desire to
21 produce them because I don't want to -- I just want it all
22 done at one time.

23 THE COURT: Well, let's have somebody on your end
24 look. I'm getting the impression that what Mr. Aylstock is
25 looking for would be agreements signed at the time they're

1 leaving. Is that correct, Mr. Aylstock?

2 MR. AYLSTOCK: Yes, this --

3 THE COURT: When they decided to leave the company,
4 these are agreements that they would sign in order to get
5 whatever benefits the company is willing to give to them in
6 exchange for signing these agreements, but these are things
7 done at the time they're leaving. So it should be fairly easy
8 by date of termination to figure out if these agreements
9 exist. I don't see why that would take very much time.

10 MR. AYLSTOCK: That's correct, Judge. That's what
11 we're looking for. Obviously they're in our -- in our -- you
12 know, in some form or fashion in our document requests related
13 to the depo and that we just didn't see them. So it's just
14 difficult for us to know what's not there. And given, you
15 know, what's become sort of a pattern of finding things late
16 or missing things or missing, it's very -- it behooves us to
17 ask. So that's what we did.

18 THE COURT: Well, you can certainly ask the witness,
19 the witnesses when you depose them, whether they signed these
20 agreements.

21 But, Mr. Gage, I would think it would be very simple to
22 have someone look in their employment files and determine
23 whether or not agreements were signed on or about the time
24 they left the employment of the company.

25 MR. GAGE: Well, Your Honor, the information I was

1 giving you was based upon a review of their employment files.

2 THE COURT: But it didn't sound like you were
3 talking about agreements, though, that would have been
4 executed at or near the time of their termination. It sounded
5 to me like just a standard employment agreement that somebody
6 signs at the time they become employed with the company.

7 MR. GAGE: I think that's right, and I think the
8 reason for my communicating the information was upon a review
9 of the HR file, we did not find a non-disparagement --

10 THE COURT: Okay.

11 MR. GAGE: -- or separation agreement. I was just
12 simply detailing what was in the file.

13 THE COURT: All right.

14 MR. GAGE: We were not able to -- we did review the
15 file, but we couldn't -- we could not find in the review of
16 the file a document that would be responsive to Mr.
17 Aylstock's request.

18 THE COURT: Well, do me a favor and have your
19 document person, wherever these files are maintained, look for
20 any agreements in the files that would have been signed on or
21 about the time these people left the company just --

22 MR. GAGE: I will certainly do that, Judge.

23 THE COURT: -- just to make sure that there's not
24 something out there that goes by a completely different name
25 than Non-Disparagement Agreement or Separation Agreement.

1 MR. GAGE: We will, Your Honor.

2 THE COURT: And then, Mr. Aylstock, you'll just have
3 to ask the witnesses at their depositions whether they signed
4 anything when they left the company.

5 MR. AYLSTOCK: Yes, Your Honor. Thank you.

6 MR. GAGE: Your Honor, I'll make that request as
7 soon as we get off the call.

8 THE COURT: Great. Do we have --

9 MR. GAGE: Your Honor, I know -- I just wanted -- if
10 you don't mind, this is William Gage. There are -- I've got
11 about five or six issues, and I know, you know, time is of the
12 essence on these calls. I don't think any of them are
13 significant. I think they're kind of housekeeping matters,
14 but I just wanted to let Your Honor know that I did have those
15 to discuss with Your Honor and the plaintiffs.

16 THE COURT: Well, why don't you go ahead.

17 MR. GAGE: Okay. Your Honor, you may recall that
18 there's been discussion of a deposition and a document
19 production from two German doctors, a Dr. Klinge and a
20 Dr. Klosterhalfen. And Mr. Aylstock has reached out to me.
21 You may remember, Your Honor, we had asked for their fact
22 witness deposition and also to get documents that they may
23 have concerning their relationships with Ethicon.

24 Dr. Klinge is a plaintiff's expert and then
25 Dr. Klosterhalfen is a plaintiff's expert, although he may

1 not end up being an MDL plaintiff's expert.

2 I just wanted to update Your Honor on the status of that.
3 Mr. Aylstock represented to us that he agrees that we can take
4 the fact witness deposition, that they will work with us to
5 help us get a fact witness deposition of Dr. Klinge, that they
6 may not have as much control over Dr. Klosterhalfen, but they
7 will likewise work to help us get that established.

8 And so, Your Honor, I'm hopeful that by next Friday, we
9 will be able to report a date for those depositions and also a
10 protocol for how we're going to handle getting their documents
11 produced.

12 THE COURT: Great.

13 MR. AYLSTOCK: Your Honor, just to add to that, we
14 did have that conversation. And as I told Mr. Gage, you know,
15 Dr. Klinge will be an MDL expert when the disclosures come
16 out. I don't think that's a big secret. And, of course,
17 he'll be put up for deposition, and we're not going to object
18 if fact questions are asked of Dr. Klinge in that deposition.

19 We did learn since -- or I learned personally since the
20 call that a lot of fact witness questions were asked of him.
21 They had an opportunity in the New Jersey litigation where he
22 was also designated as an expert on the same issues. So I've
23 committed to Mr. Gage to meet and confer on that.

24 And with regard to Dr. Klinge, I think there may be an
25 issue whether this should be a separate fact witness

1 deposition, an additional day or two or something, as opposed
2 to kind of rolling it into the expert deposition and knocking
3 it out all at one time, but we haven't discussed it any
4 further than that.

5 MR. ANDERSON: Your Honor, this is Ben Anderson. I
6 presented Dr. Klinge for his deposition in Germany last
7 November, and they -- the defense took his deposition over the
8 course of two very long days. And Mr. Gage's partner,
9 Mr. Brown, asked a lot of fact witness deposition questions at
10 that time, and we certainly -- and we certainly didn't object
11 to that. And so they've had one bite at the apple, and we're
12 certainly not saying that they can't have yet another bite at
13 the apple, but that is what it is. And so the last time it
14 was handled in an efficient manner and it was done at the same
15 time as his expert deposition.

16 So he has undergone, you know, 16-plus hours of
17 deposition, or two days' worth certainly. And so we would
18 just ask that we follow similar suit this time, that they ask
19 their expert questions and they ask their fact witness
20 questions at the same time since he is a German witness.

21 MR. GAGE: Your Honor, if I may --

22 THE COURT: Is that not the idea, that you're going
23 to try to do them essentially at the same time?

24 MR. GAGE: Your Honor, I think -- this is William
25 Gage. Judge, one of the things that we didn't have then and

1 we don't have now are the documents and the e-mails that we
2 had requested from Drs. Klinge and Klosterhalfen with regard
3 to their consulting activities. We don't know what volume
4 that may be, but it is our -- it's our preference at this
5 point to perhaps have his fact witness deposition the day
6 before his expert depo, but we do need to see what the
7 document production looks like in order to get a sense of how
8 much there is.

9 He was apparently a consultant for a number of years to
10 Ethicon.

11 THE COURT: Well, that doesn't sound unreasonable to
12 me. I think your deposition protocol, if I'm not mistaken,
13 also states that to the extent that you have depositions from
14 New Jersey litigation, you are to use those and not re-ask the
15 same questions or re-plow the same ground. So I'm sure you'll
16 try to not be repetitive or cumulative in your questioning.
17 But that doesn't sound unreasonable to me, to do a day of fact
18 witness and then move on to the expert issues.

19 MR. GAGE: Your Honor, we'll put a proposal
20 together; and if we can't iron everything out by next Friday,
21 we'll let Your Honor know.

22 THE COURT: All right.

23 MR. GAGE: Another just quick kind of a housekeeping
24 matter, the plaintiffs filed two 30(b)(6) -- two new 30(b)(6)
25 notices last week, and one relates to MedScand documents.

1 Basically they want to take a 30(b)(6) on where the documents
2 are located and that sort of thing.

3 And then there's another 30(b)(6) notice that they filed,
4 and it relates to hernia mesh testing and TVT testing and
5 PROLENE testing. And Bryan and I have agreed to talk on
6 Monday. He and I -- Bryan and I are going to talk about
7 meeting and conferring on the hernia aspect of it. And then
8 two guys from my office, Michael Brown and Chad Hutchinson,
9 are going to talk with, hopefully, Ben Anderson on Monday on
10 the TVT/PROLENE side of that 30(b)(6). We've got a few
11 issues; and my hope is, Judge, we can work out some resolution
12 next week.

13 My only request is I would just ask for the plaintiffs'
14 and the Court's indulgence that if we can't reach an agreement
15 by Friday of next week, then Bryan and I will advise the Court
16 next week of the date by which I would file a motion for a
17 protective order.

18 THE COURT: Let me ask you something, Mr. Gage. I
19 recall in the back of my mind receiving some sort of draft
20 stipulation that I thought applied to the hernia --

21 MR. GAGE: That's on my -- that's coming up next on
22 my agenda.

23 THE COURT: Okay. So wouldn't these two issues
24 overlap?

25 MR. GAGE: Well, interestingly, Your Honor, one of

1 the reasons why I wanted to meet and confer with Bryan on the
2 hernia aspect of it was to talk about his request in light of
3 the stipulation that has been sent to Your Honor for
4 signature.

5 THE COURT: Now, wait --

6 MR. GAGE: So there is some overlap on that.

7 THE COURT: Wait a second with that, though. I
8 don't believe I ever got a stipulation for signature. What I
9 received was a partial stipulation with some kind of comments
10 that you expected some additional exhibits or appendices to be
11 forwarded to me.

12 So I haven't even looked at that stipulation closely. I
13 did not understand that to be a final agreement.

14 MR. AYLSTOCK: Your Honor, this is Bryan Aylstock.
15 We -- you know, the appendices -- the issue with the
16 appendices were some additional search terms that we had
17 requested. And I think I'm stating this fairly -- William can
18 correct me -- they didn't object to those terms. They just
19 wanted it per se -- they wanted to run some checks with their
20 IT folks to see whether -- you know, what that was turning up
21 and whether they could be -- might need to be narrowed or
22 changed or so forth. And that's where it sat, and I haven't
23 heard back from them on that testing to see, you know, kind of
24 where that is.

25 But, you know, the problem again -- and I'm very glad

1 this came up, because that stipulation has deadlines and
2 figures upon ordering of a stipulation. And, you know, we've
3 been asking for the documents. So we need to get that
4 resolved. And if we need to amend perhaps the search terms
5 later on, we can do that, but --

6 THE COURT: Well --

7 MR. GAGE: Your Honor, this is William Gage.

8 THE COURT: -- so am I to --

9 MR. GAGE: When we -- when we sent the stipulation
10 to Your Honor -- I'm having a hard time remembering who
11 actually sent the e-mail to your assistant, but it was the
12 intention of both Bryan and me that it was ready to be signed,
13 that there are three appendices and the appendices made by
14 agreement of the parties be changed from time to time because
15 things like list of custodians and Bryan may say, "Hey,
16 William, I want to add a couple," and we'd say, "Sure, go
17 ahead and add a couple," or he may want to say, "I want to
18 change a search term." And we would not expect the Court to
19 have to enter a new hernia stipulation every time we change
20 one of the items on appendices A, B or C.

21 So from our perspective -- I mean I think from
22 everybody's perspective, plaintiffs' and defendant's, the
23 hernia stipulation is ready to be entered by Your Honor and,
24 with the understanding that Bryan and I have already had and
25 we've already discussed, those appendices will change from

1 time to time, but I don't think either one of us expects that
2 Your Honor is going to have to keep entering new amended
3 orders.

4 THE COURT: Okay. Was that sent -- let me ask you,
5 was that sent to Laura in Word form? Because what I would
6 have to do is take your stipulation and enter it as a pretrial
7 order. Most likely what I would do would be to incorporate it
8 into a pretrial order and just say the parties have agreed and
9 stipulated to the following and the Court hereby adopts and
10 orders it as such. And then I would then just put your
11 stipulation into the pretrial order.

12 MR. GAGE: Judge, I actually think we put it
13 together in that fashion. In other words, I think when you
14 look at it, it's got like a heading and a style and it starts
15 off with something like, you know, it is so ordered by
16 agreement of the parties --

17 THE COURT: Okay.

18 MR. GAGE: -- and then has a signature blank for the
19 Court. I believe that's the way we structured it.

20 THE COURT: All right. Well, then, I'll go ahead
21 and enter that today. I was really under the impression that
22 that was a draft stipulation that you had agreed to 90 percent
23 of but that there was still some tweaking that needed to be
24 done. So I hadn't really looked it over very closely or tried
25 to enter it. I was waiting for something final to come to me.

1 MR. GAGE: Well, I'm sorry, and I should have been
2 clearer in the way that we communicated. And I know that
3 Bryan and I got cleared on it. I just failed to communicate
4 our level of clarity to Your Honor.

5 THE COURT: Well, no harm done if you've been
6 following it. I'll just go ahead and order it -- or enter it
7 today when we get off the phone.

8 MR. AYLSTOCK: Thank you, Judge. And, William, if
9 you could just let me know on those additional search terms --

10 MR. GAGE: Yep.

11 MR. AYLSTOCK: -- because the sooner, the better.

12 MR. GAGE: Yep. Yep.

13 THE COURT: All right. Well -- and then the
14 MedScand documents, so you don't have any problem with --
15 you're not -- you're just advising me that there's been a
16 Rule 30(b)(6) notice filed on that; is that correct?

17 MR. GAGE: Yes, Your Honor. I'm not -- I don't --
18 as I'm sitting here, I can't remember any big issue about
19 that.

20 THE COURT: Okay.

21 MR. GAGE: But my point on the hernia and the TVT
22 and the PROLENE 30(b)(6) notice, I just didn't want to run
23 across and trip across a deadline to file a motion for a
24 protective order. You know, sometimes it's hard to figure out
25 what is a deadline for a motion for a protective order on a

1 subpoena that contains document requests and that sort of
2 thing. And I just thought it would be good if I could ask
3 Your Honor's indulgence and that of the plaintiffs to give us
4 until next Friday to announce to the Court whether we need to
5 do any further arguing or whether we have reached an
6 agreement; and if we have gotten to Friday and we don't have
7 an agreement, then Your Honor could set a date perhaps the
8 following week when we would be filing something.

9 THE COURT: That sounds fun.

10 MR. ANDERSON: Your Honor, Ben Anderson. I'm sorry.
11 This is Ben Anderson again. And that's the way we were
12 looking at the Klinge and Klosterhalfen subpoena as well. So
13 that we aren't feeling like we are tripping up over a date or
14 something, we are going to try to meet and confer on this.
15 But if for some reason we can't, then we're going to bring the
16 Klinge and Klosterhalfen, both requests for the deposition and
17 as well as an array of documents that they've asked us to
18 produce.

19 First of all, you know, we don't control Dr.
20 Klosterhalfen. But even with regard to him and Klinge,
21 there's some significant issues that are hanging out out
22 there, not just the fact witness deposition. And so even
23 though they've served the notices, that's something that we
24 consider that we're still meeting and conferring on. So that
25 we don't get tripped up in any guidelines or deadlines as

1 well, that's something we'll bring back to Your Honor. Thank
2 you.

3 THE COURT: That's fine.

4 MR. GAGE: And, Your Honor, this is William Gage,
5 and I fully agree with that sentiment. All of us have enough
6 on us that we don't need to be tripping each other over
7 deadlines, but we obviously need to keep Your Honor apprised.

8 THE COURT: I appreciate that.

9 MR. CARTMELL: Your Honor, this is Tom Cartmell. I
10 had one sort of time-sensitive issue I was going to try to
11 bring up if we have a few minutes.

12 THE COURT: Yes.

13 MR. CARTMELL: We have Miss Angelini's deposition on
14 the 16th. That's the 30(b)(6) depositions day. It's a one-
15 day 30(b)(6), and it's the one we talked about last week that
16 has to do with payments to consultants and things like that.

17 I have sent an e-mail to William, I believe just the
18 other day, and had asked that we get a copy of the responsive
19 documents that are -- the ones that are responsive to our
20 requests for documents that accompanied our subpoena, our
21 notice that we filed. It's over 30 days ago or about 30 days
22 -- 35? Oh, on August 5th. August 5th we filed it. And
23 asking if we could get a copy of the responsive depo documents
24 or an indication of the ETH mesh bates numbers for the
25 documents that are responsive.

1 This was an issue that came up, you may recall, with Dan
2 Smith beforehand, and I think -- I don't want to misstate what
3 you said, and I didn't -- I don't think there was a transcript
4 on this one hearing, but I think what you had said is that
5 they should, at the very least, give us the date ranges. And
6 the only reason is we want to make sure we have enough time
7 before the deposition to get the responsive documents, review
8 them, get them organized so that we can be efficient and get
9 things done on the day of the deposition.

10 THE COURT: Mr. Gage?

11 MR. GAGE: Your Honor, this is William Gage. Your
12 Honor, I will tell you that because I'm not personally the
13 person wrapped up in Laura Angelini and all the documents and
14 the MedScand issues and Tom knows a lot more than I would,
15 what I would request is that we have a call no later than
16 Monday morning with Mr. Cartmell to -- so that my people that
17 are doing Laura Angelini, and me if necessary, are on that
18 call.

19 I want to make sure there are -- I want to know -- I want
20 to hear from Tom himself exactly what he needs, and I want to
21 make sure my people are focused on getting exactly what he
22 needs, because I agree with Tom; I do not want a problem. And
23 I suspect that there could be one because there are a lot of
24 people involved on Angelini. And I want to make sure we don't
25 have a problem.

1 So, Your Honor, if I could ask that Tom and I get on the
2 phone no later than Monday morning to get really squared away
3 on this. I want to make sure I give him what he's entitled
4 to.

5 THE COURT: Well, obviously --

6 MR. CARTMELL: This --

7 THE COURT: Yes, go ahead.

8 MR. CARTMELL: I apologize, Your Honor. This is Tom
9 Cartmell again. I'm willing to do that. I guess a couple
10 weeks before the deposition -- and I had -- in my e-mail I was
11 hoping to get the documents a week in advance, especially
12 because I have two depositions, two other depositions next
13 week, and we can talk about it, but essentially the document
14 request is very specific to what we're asking for. It's a
15 very limited 30(b)(6) notice. It's the documents that reflect
16 payments to the consultants.

17 So, you know, I was hoping to get as much information
18 maybe by then that I could get, but I'm also willing to --

19 MR. GAGE: Well, I'll tell you what. I'll tell you
20 what, Tom.

21 MR. CARTMELL: And --

22 MR. GAGE: I'm sorry. I apologize for interrupting,
23 Your Honor. Your Honor, I will -- now that I know a little
24 more precisely what the issues on -- on this payment of
25 consultant issue, I will call, as soon as we get off this

1 phone call, my documents people and tell them that that's what
2 we need to be able to discuss with Tom and provide to him,
3 hopefully on Monday, if we have it. And then, Judge, that
4 gives me a head start.

5 THE COURT: Great. Obviously he's going to need --
6 if you want -- if you want the deposition to be efficient and
7 fast, he's going to need the documents in advance. And
8 certainly the number of pages of documents will make a
9 difference in how much -- how well he'll be able to review
10 them. But the more there are, the sooner he needs them
11 obviously.

12 So I do think, perhaps maybe even this afternoon,
13 somebody in your office, Mr. Gage, can figure out if there's
14 any Bates number ranges that they could send him to so he
15 could start looking at those over the weekend if he wishes to
16 do so.

17 MR. GAGE: Yep, I will certainly endeavor to do
18 that, Your Honor.

19 THE COURT: Let's try to do -- let's try to get as
20 much to him. I have a feeling he won't be happy unless he has
21 something to do this weekend related to this MDL. So let's
22 try to --

23 MR. CARTMELL: Your Honor --

24 THE COURT: -- make sure you put as many documents
25 on him as you can so he can spend all weekend reading those.

1 MR. GAGE: Thank you, Judge. This is William Gage.
2 I just have just two more issues and then I'm done and they're
3 both -- they should be both very quick.

4 This is just a matter of apprising Your Honor of one of
5 the two plaintiffs whose case is scheduled to be tried in
6 January may be undergoing a surgery, I think this upcoming
7 week, which could result in some explanted mesh being
8 available for testing and inspection.

9 And Mr. Anderson and I have been talking about this.
10 We've actually put together a protocol on how we're going to
11 handle the testing of that explant if, in fact, one is
12 produced from the surgery. And I just wanted to let Your
13 Honor know that Ben and I both also talked about the fact that
14 we -- he's got an expert deadline coming up and I've got an
15 expert deadline coming up; that depending on when the surgery
16 is and, you know, how quick the doctor gets it from point A to
17 point B, etcetera, there may be a need for Mr. Anderson and I
18 to approach Your Honor next week or the week after with some
19 agreement on slight modifications of deadlines regarding that
20 specific issue on expert designations.

21 THE COURT: Well, you can approach me, but
22 ultimately that's going to be Judge Goodwin's decision to
23 make. When it comes to extending deadlines in the scheduling
24 order, that is completely up to him, and I really don't have
25 any authority to extend anything, but obviously, you know,

1 you'll want to -- I'll make Kate aware that there's this
2 issue.

3 You know, one thing also I might suggest is that you have
4 some conversation with the hospital to make sure that you can
5 get the mesh as soon as possible, because I know from having
6 worked at a hospital, that that sometimes is difficult to do
7 unless there have been arrangements made in advance.

8 MR. ANDERSON: This is Ben Anderson, Your Honor, and
9 we've done exactly that, and we tried to put as many ducks in
10 a row as possible to ensure that they understand fully at the
11 hospital -- at the hospital what we want, what we need, and
12 that we need it expedited.

13 And so fingers crossed and looking upwards, we hope to be
14 able to get that and to move on it as soon as we can. And
15 then if it looks like we have an issue, then it sounds like we
16 need to take that up through Kate and to Judge Goodwin, and we
17 appreciate you.

18 THE COURT: I will definitely. I'll let her know in
19 advance. Now, which particular plaintiff is this?

20 MR. ANDERSON: This is Miss Lewis.

21 THE COURT: Miss Lewis. Okay. You know, it was so
22 hard to get the plaintiffs selected for this first round of
23 trials that I'm sure he won't be happy to hear that one of
24 them is having surgery at this point, but, you know, that
25 can't be helped.

1 MR. ANDERSON: Yes, Your Honor. It's Ben Anderson.
2 We had mentioned that during -- I presented on the bellwether
3 stuff in front of His Honor, and that was known, and it was
4 known through the deposition process as well. So it's not a
5 surprise, if you will, but I can appreciate what you're
6 saying.

7 THE COURT: Okay.

8 MR. AYLSTOCK: Your Honor, this is Bryan. On that
9 note -- and I don't know if, William, you've heard from the
10 Davis & Crump firm. The backup case, I did hear from them
11 that there may be some issue with her ability to sit through a
12 trial. She was the one who had had a couple of previous
13 suicide attempts. And that was also discussed. But I don't
14 know if they've reached out to you, William, but I wanted to
15 make sure that they had, if they haven't. And I guess I
16 wanted you to be aware of that as well, Judge, so that it's
17 known as soon as I knew.

18 THE COURT: You're not going to make Judge Goodwin
19 very happy.

20 MR. AYLSTOCK: No --

21 THE COURT: He wasn't happy -- he was not happy with
22 the bellwether selections, nor was I. I just couldn't believe
23 in thousands and thousands of cases that there -- that you
24 couldn't find some people who really fell into a mainstream.
25 Obviously you made that decision. Hopefully this won't all

1 explode on you, but he's not going to be very happy. I can
2 tell you that.

3 MR. AYLSTOCK: I'll wear my flak jacket, Your Honor.

4 THE COURT: Yes, I would if I were you.

5 MR. GAGE: And, Judge, I'm glad I'm not coming up
6 there on September 19.

7 THE COURT: It might be best to avoid it if you can,
8 so --

9 MR. ANDERSON: William, can we schedule Hinoul's
10 deposition for that day, please?

11 THE COURT: Get as far away as you can. Maybe
12 that's a day you should go to Germany.

13 MR. GAGE: I agree.

14 THE COURT: All right. Is there anything else,
15 Mr. Gage?

16 MR. GAGE: No, Your Honor. Thank you.

17 THE COURT: I think that's about our time for today.
18 So I know we have a couple of things we're going to follow up
19 on next Friday. And I will, as I said, go right now and get
20 that stipulation entered so that we can get that on the books.
21 But I guess since you've agreed to it, you know you should be
22 following it, whatever it says.

23 MR. GAGE: Correct.

24 THE COURT: All righty.

25 MR. AYLSTOCK: Thank you, Judge. Appreciate all

1 your time on another Friday afternoon.

2 THE COURT: Thank you.

3 MR. GAGE: Have a great weekend.

4 THE COURT: You all too. Bye-bye.

5 (Hearing concluded at 3:05 p.m.)

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21 I, Teresa M. Ruffner, certify that the foregoing is a
22 correct transcript from the record of proceedings in the
23 above-entitled matter.

24

25 /s/Teresa M. Ruffner

September 9, 2013